

**REMARKS****File History**

The latest, and allegedly "final" Office action of 10/18/2005 appears to mostly be a verbatim copy of the Office action of 6/27/2005. Pages 2-5 of the Final Action track pages 2-6 of the 6/27/2005 Action with the exception that the "Election/Restriction" paragraph at the beginning has been deleted, and a new, but relatively short "Response to Argument" paragraph 5 is added to pages 5-6 of the Final Action.

For purpose of completeness, the essentially unchanged status of the application is repeated here. The following allowances, rejections, objections and other actions appear to have been made:

- Claims 1-2, 4, 8, 13-14 are "finally" rejected under 35 USC §102(e) as being fully anticipated by Fujimoto et al (US 6,830,973 filed 9/11/2002).
- Claims 1-12, 15 are "finally" rejected under 35 USC §103(a) as being obvious over Kim (US 6,806,517) in combination with Gluschenkov (US 6,667,197).
- Claims 16-20 are finally restricted from examination.
- The PTO indicates that it continues to give no patentable weight to at least one preamble recitation.
- No reason is given for making the latest Office Action "final".

**Summary of Current Response**

No Claims are substantively amended.

Arguments are presented concerning the improper procedure, lack of due process and re improper bases of rejection.

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**Applicants' Overview of Outstanding Office Action**

Applicant sees the outstanding Office action of 10/18/2005 as having the following major features:

(1) No "reason" is given for making the action "final". Failure to give a reason is also known as "unreasonable" action. It is barred by law.

(2) The PTO *continues to admit that it is giving no patentable weight* to the preamble limitation:

"... an ONO-type memory cell stack where at least one sidewall of the ONO-type memory cell stack includes a plurality of exposed material layers respectively composed of different materials ..."

(final OA page 3, paragraph 2, line 1).

{The unweighted language appears not only in rejected Claim 1 but also in the preamble of restricted out Claim 16.}

(3) The PTO *continues to ignore* the specifics of the rejected claims and instead maintains its sweeping conclusion that all these claims are either fully *anticipated* by Fujimoto or are *obvious* in view of Kim combined with Gluschenkov.

(4) The PTO *continues to admit* that neither of Kim and Gluschenkov discloses the recited volumetric flow ratio. Nonetheless, the PTO asserts that it would have been *obvious* to select "suitable time, flow rate and thickness" because "discovering" an optimum involves only routine skill (final OA page 4, paragraph 3).

**The Patent Office is an Administrative Agency, and as such is barred from acting arbitrarily, capriciously, unreasonably or otherwise not in accordance with law pursuant to the Administrative Procedure Act**

The APA [Administrative Procedure Act] provides six standards under which courts are required to ("shall") hold as unlawful and set aside agency actions, findings, and conclusions where such are found to be—

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- (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
- (B) contrary to constitutional right, power, privilege, or immunity;
- (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory rights;
- (D) without observance of procedure required by law;
- (E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or
- (F) unwarranted by the facts to the extent that the facts are subject to trial *de novo* by the reviewing court.

In making the foregoing determinations, the courts are required to ("shall") review the whole record or those parts of it cited by a party, and to take due account of the rule of prejudicial error.

5 U.S.C. § 706(2) (slightly rephrased for readability and with emphasis added) as explained in Kropp Holdings, Inc., d/b/a Avcard, v. The United States (case no.04-1655C) (Ct. of Federal Claims 2005) with citation to: Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402, 415-17 (1971).

The Kropp court explains that the United States Supreme Court sets forth a precise and detailed analysis of the appropriate "standards" of review to be applied by a court reviewing any challenged agency determination. (1) First, the court must ascertain whether the agency "acted within the scope of [its] authority." *Id.* at 415; *see also* 5 U.S.C. § 706(2)(C). (2) Second, the court must determine that "the actual choice made [by the agency] was not 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.'" *Id.* at 416 (quoting 5 U.S.C. § 706(2)(A)).

All this applies to the USPTO by virtue of 35 USC §134 (right to appeal to Board of Appeals) and its follow up statutes, 35 USC §141-144 (right to appeal to the Federal Circuit on the basis of the administrative record developed within the USPTO) and 35 USC §145 (right to maintain a civil action in district court). Since 35 USC §143 mandates that the Director of the USPTO shall transmit the record, it is incumbent on the USPTO to maintain a full and complete record in case appeal becomes warranted.

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**An arbitrary or capricious determination is one where no reason is articulated**

At page 6, paragraph 7 of the latest Office Action, *no reason is given* for making the action "FINAL". It is therefore an unreasonable action smacking of arbitrary or capricious decision making.

Withdrawal of the finality is requested as being clearly premature.

**In "excess of statutory authority" means that the Patent Office has stepped outside of bounds established by law**

35 USC §112, paragraph 2 states:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

It is well established by case law that the Patent Office cannot unilaterally rewrite Applicant's claims. Yet this exactly what the latest Office Action attempts to do.

At page 6, paragraph 6 of the final OA, the examiner asserts:

the method steps (ISSG process) of Fujimoto is the same as the presently claimed invention, thus .... [para 6, lines 2-3, emphasis added.]

Applicant finds this position to be a wholly unsupported one. Claim 1 recites "A method of forming sidewall dielectric on an ONO-type memory cell stack ...". The examiner admits he is altering "the subject matter which the applicant regards as his invention" by giving no weight to "sidewall dielectric on an ONO-type memory cell stack". Thus, the examiner is dealing with his own, hypothesized claim and not with Applicant's claims.

This action by the Examiner is outside of what is permitted by law to the US PTO. Applicant is "entitled" to a patent pursuant to the opening line of 35 USC §102. The Examiner is depriving Applicant of this entitlement by engaging in an unlawful rewriting of Applicant's claims.

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Reconsideration and withdrawal of the rejections is respectfully requested.

**The PTO violates 35 USC §132**

Every Office Action must conform with 35 USC §132, which requires:

(a) Whenever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references *as may be useful* in judging of the propriety of continuing the prosecution of *his application*; and if after receiving such notice, the applicant *persists* in his claim for a patent, with or without amendment, the application shall be re-examined [emphasis added.]

First and once again, failure to articulate a "reason" for the finality requirement constitutes a violation of §132. The statute mandates that the Director "shall" state the reasons.

Second, it is wholly unreasonable and confusing to reject a same claim (i.e., Claims 1, 2, 4, 8) under 35 USC §102 both directly for express recitation, and indirectly under the **doctrine of inherency**. Either Fujimoto expressly contains all the elements of these claims or it doesn't. Which is it? And if it does not, it is incumbent upon the examiner to provide a clear and detailed explanation of how inherency comes into play. Applicant is wholly confused by the psycho-babble provided at page 6, paragraph 6 of the final OA, where the examiner asserts:

the method steps (ISSG process) of Fujimoto is the same as the presently claimed invention, thus inherently the method is *capable of being applied* to a ONO-type memory cell stack (i.e. as recited in the preamble) ...

Applicant can barely restrain from unleashing a series of vitriolic expletives over this gibberish. In one breath the PTO is saying no weight is given to the preamble (final OA, page 3, para 2) and in a breath taken moments later it is doing an "i.e." reference to the preamble? What kind of guiding and "useful" information is that under the mandate of 35 USC §132? (Answer: it does not comport with 35 USC §132.) In one breath the PTO is saying "Fujimoto is the same as ..." and in a breath taken moments later it is doing an "inherently" dance? What

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kind of guiding information is that under the mandate of 35 USC §132? (Answer: it does not comport with 35 USC §132.)

Then we get to the "method is *capable of being applied*" verbiage as it is being given relative to the §102 rejection based on Fujimoto. Applicant can make no coherent sense of this. Even if transferred over to the §103 rejection based on Kim in combination with Gluschenkov (which it is not), the "capable" language would be inappropriate. It is even more inappropriate for the §102 rejection given that §102 is the epitome of a §103 rejection. It is well established law that "capability" (what *can be* done) is not a valid question. Under 35 USC §103, the correct question is motivation (what *should be* done) rather than capability (can be). See for example, In re Gal 25 U.S.P.Q.2d 1076, 1079 (Fed. Cir. 1992).

Applicant is wholly confused by the further babble provided at page 6, paragraph 6 of the final OA, where the examiner further asserts:

the method steps (ISSG process) of Fujimoto is the same as the presently claimed invention, thus inherently the method is capable of being applied to a ONO-type memory cell stack (*i.e.* as recited in the preamble) in the same manner as the present invention (*i.e.* the preamble of claim 1 merely recites the capability of the oxidation steps, and the Fujimoto steps are the same thus inherently capable) ...

Applicant can barely restrain from going into yet more vitriolic expletives over this gibberish. What does this double talk mean? Has the PTO no shame in putting forth such double talk?

This is not disrespect. This is blunt truth.

#### Each Claim is entitled to full examination

Claim 10 depends from Claim 9 and states a further limitation "wherein said plurality of exposed material layers of the ONO-type memory cell stack includes: (b.4) a second silicon layer; (b.5) a second silicon oxide layer; (b.6) a tunnel dielectric layer; (b.7) wherein the first silicon nitride layer is interposed between the first and second silicon oxide layers; and (b.8) wherein the combination of the first and second silicon oxide layers and the first

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silicon nitride layer is interposed between the first and second silicon layers." [emphasis added]

Despite this, at page 6, paragraph 6 of the final OA, the examiner goes on to assert:

[A]pplicant's arguments that ... the ONO stack contains different materials. ...  
[But] limitations from the specification are not read into the claims.

What the heck is the PTO talking about here? This makes no sense either for Claim 10 or for Claim 1. Claim 10 expressly recites different materials.

Claim 1 recites "an ONO-type memory cell stack" and

where at least one sidewall of the ONO-type memory cell stack includes a plurality of exposed material layers respectively composed of different materials,

The question then becomes, what does this language mean? It is at this point that one can resort to the specification to ascertain the meaning of "an ONO-type memory cell stack" and the "exposed material layers respectively composed of different materials". Applicant has already gone through extensive trouble in the previous response on this point. The PTO has arbitrarily elected to ignore the whole thing.

**The PTO's current position is unsupported by substantial evidence**

One US Congressperson is credited with saying, "Don't confuse me with the facts." (Trivia point: During the Nixon Watergate scandal, Indiana Congressman Earl Landgrebe is credited with making that famous remark in regard to Nixon's unraveling political situation.)

While members of the legislature might have the right to ignore the facts, the USPTO is afforded no such luxury.

The USPTO is charged by law to ascertain the facts and to correctly construe the claims during the examination process.

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**The Examiner is required by law to not only state that he has fully considered Applicant's arguments and evidence in rebuttal, but to specifically articulate the examiner's counter positions, so that Applicant can decide whether to appeal, and if yes, so that the Board of Appeals is apprised fully of the examiner's position:**

From: 26 Nov-04 fd041753.pdf Ex Parte Gillis et al (Appeal No. 2004-1753 re Application No. 09/524,086, denoted as nonprecedential without reason by the Board):

In resolving the questions of obviousness/nonobviousness before us in this appeal, it is necessary to weigh the entire merits of the matter and to consider all of the evidence of record. *In re Piasecki*, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984). We are mindful that objective evidence of nonobviousness in any given case is entitled to more or less weight depending on its nature and its relationship with the merits of the claimed invention. *Stratoflex Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 1539, 218 USPQ 871, 879 (Fed. Cir. 1983). Thus, the evidence of nonobviousness submitted by the appellants must be considered en route to a determination of obviousness/nonobviousness under 35 U.S.C. § 103. Accordingly, we must carefully evaluate both the teachings of the applied prior art and the evidence of nonobviousness supplied by the appellants. See *In re Oetiker*, 977 F.2d 1443, 1445-46, 24 USPQ2d 1443, 1444-45 (Fed. Cir. 1992).

The examiner has not properly considered the evidence of nonobviousness supplied by the appellants (answer, p. 5). When determining obviousness/nonobviousness under 35 U.S.C. § 103, the subject matter as a whole must be weighed. Thus, even if the examiner were to be correct that the "crux of the invention" was not new, the evidence of nonobviousness submitted by the appellants still must be considered en route to a determination of obviousness/nonobviousness under 35 U.S.C. § 103.

**Applicants' Continuing Objection to Treatment of Preamble Language and other parts of the claims**

Proper construction of claim language is a prerequisite to essentially all rejections or restrictions against claims.

MPEP §2111.01 part II explains that "Claim terms are presumed to have the ordinary and customary meanings attributed to them by those of ordinary skill in the art." (emphasis added). The broadest reasonable interpretation of the claims must ... be consistent with the interpretation that those skilled in the art would reach. (citing *In re Cortright* in the introduction to §2111). The MPEP goes on to explain by also relying on *In re Marosi*, 710 F.2d 799, 218 USPQ 289 (Fed. Cir. 1983) that "Claims are not to be read in a vacuum, and

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limitations therein are to be interpreted in light of the specification in giving them their 'broadest reasonable interpretation'." 710 F.2d at 802, 218 USPQ at 292 (emphasis added).

If the claims are not given a proper interpretation, then the whole examination process is for naught because the claim is the name of the game (Paraphrasing *In re Hiniker Co.*, 47 USPQ2d 1523, 1529 (Fed. Cir. 1998)).

In ruling on weight to be given to the preamble, the PTO relies on Bell Communications Research, Inc. v. Vitalink Communications Corp.

It is respectfully submitted that *Bell Communications*, holds exactly opposite to the way the examiner reads it !!!!!!!.

As explained by the court later in Eaton Corp. v. Rockwell Int'l Corp., 323 F.3d 1332; 66 U.S.P.Q.2d 1271, (Fed. Cir. 2003), rehearing denied 2003 U.S. App. LEXIS 10936 (Fed. Cir. 2003):

"[A] claim preamble has the import that the claim as a whole suggests for it. In other words, when the claim drafter chooses to use both the preamble and the body to define the subject matter of the claimed invention, the invention so defined, and not some other, is the one the patent protects." Bell Communications Research, Inc. v. Vitalink Communications Corp., 55 F.3d 615, 620, 34 USPQ2d 1816, 1820 (Fed. Cir. 1995). When limitations in the body of the claim rely upon and derive antecedent basis from the preamble, then the preamble may act as a necessary component of the claimed invention. See, e.g., *Electro Sci. Indus. v. Dynamic Details, Inc.*, 307 F.3d 1343, 1348, 64 USPQ2d 1781, 1783 (Fed. Cir. 2002); *Rapoport v. Dement*, 254 F.3d 1053, 1059, 59 USPQ2d 1215, 1219 (Fed. Cir. 2001); *Pitney Bowes*, 182 F.3d at 1306, 51 USPQ2d at 1166. On the other hand, "if the body of the claim sets out the complete invention," then the language of the preamble may be superfluous. *Schumer v. Lab. Computer Sys., Inc.*, 308 F.3d 1304, 1310, 64 USPQ2d 1832, 1837 (Fed. Cir. 2002); *Bristol-Myers Squibb Co. v. Ben Venue Labs., Inc.*, 246 F.3d 1368, 1373-74, 58 USPQ2d 1508, 1512 (Fed. Cir. 2001).

... Instead, as in Bell Communications and *Griffin*, we conclude that the inventor [of Eaton] chose to use both the preamble and the body of the claim to define his invention. The preamble therefore limits the claimed invention. As such, claim 14 as properly construed requires an "automatic mechanical vehicle driveline system" that includes, among other things, "an information processing unit" for processing signals in accordance with a program for causing the engagement of gear

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ratio combinations. [text copied from Eaton Corp., emphasis and square brackets added].

The present situation is on point with *Bell Communications* and *Eaton Corp.* The body of Claim 1 makes antecedent reference to an element recited in the preamble, namely, "(a) subjecting the at least one sidewall to ..." The body of Claim 16 makes antecedent reference to an element recited in the preamble, namely, "(a) a sidewall-coating dielectric whose fabrication was at least initially started by subjecting at least one otherwise exposed and multi-layered sidewall of the ONO-type memory cell stack to a dry ISSG process (In-Situ Steam Generation)." [emphasis added in both instances].

Because the PTO chose to ignore essential parts of the claims in reaching its decisions both as to restriction and as to patentability, it is respectfully submitted that the entirety of the original and final Office actions are defective. The rejections and restrictions should be rescinded. Reexamination of all issues is respectfully requested.

Despite the above and in order to expedite matters, Applicant proceeded in the first response to review the applied art and applied rational, and to proffer *evidence and arguments* as to why the first Office action was in error.

Applicant pointed out that with regard to Figs. 6C and 6D of Fujimoto, the person skilled in the art would view only the vertical edges of 13B and 14B as forming the "sidewall", particularly in light of usage of that term within the present application. Applicant argued that ruling otherwise would be wholly unreasonable because then the term "sidewall" would mean every surface. It would have no meaning or end to it. One could arbitrarily continue around to the bottom surface of the substrate. A person skilled in the art would find such an interpretation to be unreasonable.

With regard to the term "an ONO-type memory cell stack", the following observations were made. First, Claims 9-11 recite elements included in the stack for respective

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embodiments of claims 9-11. It is well established that the claims themselves are the best place to start when seeking to interpret claim language.

Second, with regard to paragraph [0009] of the present application, it was pointed out that the "inter-gates insulator (IGI) layer typically contains a series of different dielectric materials. The classical combination is that of silicon oxide, silicon nitride and again silicon oxide, hence the name, ONO." The specification goes on to state that "Such sandwiching of different kinds of material layers between the memory cell gates as well as the materials of the memory cell gates can create problems as will be further explained" (emphasis added). At paragraph [0015] the present application states "However, the very fact that the ONO stack contains different materials, most notably: a silicon nitride layer or the like, makes it difficult to consistently form sidewall insulation of both good quality and consistent dimensions. Silicon nitride resists conventional oxidation. As a result, ... leaving the side of the silicon nitride layer relatively un-oxidized. This differential behavior often results in the formation of a Bird's Beak geometry." (emphasis added).

The issue is what does "an ONO-type memory cell stack" mean? This is not reading limitations from the specification into the claim. This ascertaining the meaning of language that is clearly present in the claim.

It was pointed out that at paragraph [0034] the present application states "(Although a conventional, oxide-nitride-oxide combination is described for purpose of example, it is within the contemplation of the disclosure that other stacks of different dielectric materials may be used in place of the fundamental ONO stack 117, for example, a NONO stack which may include oxynitride layers within it. The gate electrodes may additionally, be made of materials other than polysilicon.)" (emphasis added).

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In view of the above intrinsic evidence, it is seen that there is much discussion in the specification about the nature of an "ONO-type memory cell stack". The specification makes it clear that the ONO-type memory cell stack will have dielectric layers that oxidize differentially when exposed to conventional oxidation methods.

The structure shown in Fig. 6C of Fujimoto cannot qualify as an "ONO-type memory cell stack" because it has only one insulating layer, 13B. It cannot suffer from differential oxidation of plural dielectric layers. Thus Fujimoto cannot logically anticipate the subject matter of Claim 1. The rejection cannot be sustained.

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With regard to the Kim '517 reference, Applicant agreed that yes, Kim clearly does have an ONO wedge structure. In Fig. 7B items 722 (O), 724 (N), 722 (O --a continuation of the other side of the wedge) define such a wedge.

However, Applicant went on to point out that Kim fails to appreciate the problem of differential sidewall oxidation and fails to solve the unrecognized problem. In Kim Fig. 7B, layer 732 defines the sidewall oxide. This layer 732 of Fig. 7B is formed by CVD deposition just as layer 632 is formed in the case of corresponding Fig. 6F. See col. 7, lines 26-27. See also col. 6, lines 65-66.

The initial Office action confirmed this reading of Kim at OA page 4, last two lines and page 5, line 1. Thus there is no factual dispute on this point.

With regard to motivation to combine, applicant pointed out that the initial Office action did not explain how an ordinary artisan would come to see a connection between Gluschenkov and Kim. Note that articulation of a "reason" is mandated by law.

Gluschenkov is directed to thermally growing oxide on a semiconductor (col. 3, line 29) having adjacent semiconductive regions with different doping concentrations (col. 3, line 30). Gluschenkov does not anywhere teach or suggest that thermal growth of oxide is a substitute for CVD deposition of oxide. Kim does not anywhere teach or suggest that thermal growth of oxide is a substitute for CVD deposition of oxide.

It is well understood by skilled artisans that thermal growth and CVD deposition are uniquely different methods for defining of oxide. For one thing, thermal growth consumes silicon by converting it into oxidized silicon. Kim is very concerned with maintaining accurate dimensions for his LDD structures (Kim col. 3, lines 35-41 --just above Summary of

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the Invention). Thermal sidewall oxidation would alter the LDD dimensions that Kim creates in Fig. 6E via etch back prior to LDD implant step 635 in Fig. 6F. This is how an ordinary artisan would read Kim.

The ordinary artisan would therefore be motivated away from considering thermal sidewall oxidation. Moreover thermal growth affects the thermal budget whereas CVD does not to the same extent. This would be another reason the ordinary artisan would be motivated away from considering thermal sidewall oxidation in Kim in place of the CVD process actually taught by Kim.

In one embodiment, Gluschenkov's "stacks" consist of silicon (col. 4, line 66). Metal may be provided on the upper portion of the "stack" (col. 5, lines 1-2).

Gluschenkov presents his hydrogen content for the ISSG process in terms of partial pressure (col. 6, lines 5-10). It is not inherent that volumetric flow ratio would comport with partial pressure ratios.

Applicant pointed out that the only justification that the initial Office action feigned at providing for the proposed combination of the unrelated disclosures of Kim and Gluschenkov was found at initial OA page 5, last 3 lines of top paragraph. It is no justification at all but simply a raw conclusion followed by a disconnected statement that one skilled in the art would view ISSG as providing excellent thickness control.

It is well established that a prima facie case of obviousness requires motivation to combine and an articulated basis for modifying one reference in view of the other. Both of these are lacking in the present situation. One skilled in the art would not have seen any

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logical connection between Kim and Gluschenkov and thus there is no motivation to combine. Applicant provided evidence and accompanying arguments above about why there is motivation to \*not\* substitute high temperature and material consuming oxide growth in place of low temperature CVD as taught by Kim. Thus the balance of substantial evidence on record points away from combining Kim with Gluschenkov and away from substituting a thermal growth process for a CVD sidewall process.

With regard to the PTO's reliance on In re Woodruff, this is misplaced. The burden is initially on the PTO to present a *prima facie* case of obviousness, including a showing of an overlap of ranges for each of the rejected claims. Only then does the burden shift to Applicant to show criticality.

With regard to some of the rejected claims, the Office action does not even try to present a pretense of rational for making the obviousness rejection. Take for example, Claim 10 which calls for: "(b.4) a second silicon layer; (b.5) a second silicon oxide layer". In Kim's wedge structure it is the same "second oxide" 618 of Fig. 6D that becomes 622 of the etched back wedge in Fig. 6E.

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**BEST AVAILABLE COPY**Highlighted Copy of the previous CLAIMS LISTING (all of pending claims 1-20)

**Claim 1 (Original):** A method of forming sidewall dielectric on an **ONO-type memory cell stack** where at least one sidewall of the ONO-type memory cell stack includes **alternating exposed material layers** respectively composed of **alternating materials**, the method comprising:

- (a) subjecting **the** at least **one sidewall** to a dry ISSG process (In-Situ Steam Generation) where the dry ISSG process comprises:
  - (a.1) flowing molecular oxygen (O<sub>2</sub>) towards **the stack**; and
  - (a.2) flowing molecular hydrogen (H<sub>2</sub>) towards **the stack**, where the volumetric flow ratio of the H<sub>2</sub> to the O<sub>2</sub> is less than about 0.2.

**Claim 2 (Original):** The sidewall dielectric forming method of Claim 1 wherein:

- (a.2a) said volumetric flow ratio of H<sub>2</sub>/O<sub>2</sub> is less than about 0.1.

**Claim 3 (Original):** The sidewall dielectric forming method of Claim 1 wherein:

- (a.2a) said volumetric flow ratio of H<sub>2</sub>/O<sub>2</sub> is equal to, or less than, about 0.02.

**Claim 4 (Original):** The sidewall dielectric forming method of Claim 1 and further comprising:

- (b) rapidly heating the flowing oxygen (O<sub>2</sub>) and flowing hydrogen (H<sub>2</sub>) to a temperature in the range of about 850°C to about 1050°C as they flow towards **at least one sidewall**.

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**Claim 5 (Original):** The sidewall dielectric forming method of Claim 1 and further comprising:

- (b) continuing the subjecting of ~~the~~ at least one sidewall to the dry ISSG process for a duration selected from the range of about 20 seconds to about 300 seconds.

**Claim 6 (Original):** The sidewall dielectric forming method of Claim 1 and further comprising:

- (a.1a) setting or varying the O<sub>2</sub> flow rate over the range of about 3slm to about 10slm (ten standard liters per minute).

**Claim 7 (Original):** The sidewall dielectric forming method of Claim 1 and further comprising:

- (a.2a) setting or varying the H<sub>2</sub> flow rate over the range of about 0.1slm to about 1slm.

**Claim 8 (Original):** The sidewall dielectric forming method of Claim 1 and further comprising:

- (b) establishing a chamber pressure for the flowing oxygen (O<sub>2</sub>) and flowing hydrogen (H<sub>2</sub>) in the range of about 5 Torr to about 50 Torr.

**Claim 9 (Original):** The sidewall dielectric forming method of Claim 1 and further wherein:

- (b) said plurality of exposed material layers of the ~~ONAP layer~~ ~~includes~~ includes:

- (b.1) a ~~first silicon oxide~~ layer,
- (b.2) a ~~first silicon~~ layer, and
- (b.3) a ~~first silicon oxide~~ layer.

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**CONCLUSION**

In light of the foregoing, Applicant respectfully again requests that all the rejections and restrictions be withdrawn and reconsidered. The finality should be withdrawn as having been prematurely issued without any reason therefore. Should any other action be contemplated by the Examiner, it is respectfully requested that he contacts the undersigned at (408) 392-9250 to discuss the application.


The Commissioner is authorized to charge any underpayment or credit any overpayment to Deposit Account No. 50-2257 for any matter in connection with this response, including any fee for extension of time and/or fee for additional claims, which may be required.

I hereby certify that this correspondence is being transmitted by facsimile to 571-273-8300 and addressed to: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on October 28, 2005.

  
Signature

10-28-2005  
Date

Respectfully submitted,

  
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